IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1380 OF 2004.

Shri.Rangrao Laxman Gaikwad : Appellant.

versus

Nirmaldas Kodomal Vadhvani : Respondent.

Mr.R.G.Ketkar for the appellant.

Mr.C.G.Gavnekar with G.S.Hiranandani and Deepa Sawant for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 21st June 2005.

ORAL ORDER

1. Heard advocates for the appellant and respondent. This appeal is filed by the original defendant. The plaintiff respondent had filed a suit for cancellation of document i.e. agreement of sale, because after entering into that agreement, he had issued public notice. two objections were raised regarding that

transaction. Therefore, wisdom prevailed upon the plaintiff not to enter into a deal which is doubtful. He, therefore, asked for refund of the amount. The trial Court decreed the suit.

2. The counsel for the appellant contended that firstly the plaintiff has nothing to show that those who have raised the objections pursuant to the public notice had anything in writing with them and, secondly, according to him, the defendant has repaid the amount of Rs.2,80,000/-.

3. So far as first aspect is concerned, I do not find any merit. If at all the objections are raised, then it was proper for the plaintiff to cancel the agreement and not to provoke and get the evidence and proof regarding that agreement.

. Secondly so far as story of repayment is concerned, firstly the defendant had no documentary evidence. Secondly, he has produced stamped receipt dated 12th January 1998, the signature upon which was denied by the plaintiff. The opinion of the hand writing expert has gone against the appellant/defendant. Therefore,

there is no evidence of repayment. The trial Court has rightly passed the decree. No interference is called for. Appeal is dismissed. Ad interim order stands vacated.

[D.G.DESHPANDE]

21/06/2005 JUDGE.